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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/524,904	03/14/2000	Kenneth R. LaBounty	13797-1116	8475

7590 03/19/2002

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EXAMINER

HONG, WILLIAM

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 03/19/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/524,904

Applicant(s)

LABOUNTY ET AL. *cn*

Examiner

William Hong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-17, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response To Amendment

Applicant's IDS received January 14, 2002, and amendment received February 12, 2002, has been entered and fully considered. An action on the merits follows.

Information Disclosure Statement

The information disclosure statement filed January 14, 2002, fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because applicant fails to provide a translation or a concise explanation of the relevance of the Japanese Patent 9-195528. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Drawings

Applicant's amendment to the drawings do NOT address all the drawing objections. As such the following drawing objection is repeated and remains outstanding.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "20" has been used to designate both a rotator unit and an apparatus. Correction is required.

Claim Objections

Applicant's amendment does NOT address the objection to claim 7. Accordingly, the objection to claim 7 remains outstanding and is repeated herein. Claim 7 is objected to because the claim has two sentences. Each claim shall have only one sentence. MPEP 608.01 (m). Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 14-17, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sederberg et al (hereinafter "Sederberg") in view of Ramun (US Patent 6,202,308).

Sederberg discloses a heavy-duty demolition apparatus for attachment to an excavator comprising: a lower jaw (14) having a primary and secondary shearing blade (64, 66) and an upper jaw (16) having a primary and secondary shearing blades (114, 116); the lower primary blade is longer than the lower secondary blade (col. 7, lines 30-35); a pivot means (18) interconnecting the two jaws; a rigid guide blade (34) on the lower jaw; an open slot (92) between the lower shear blade and the guide blade; a cross blade (94) mounted on the inside of a tie plate (32) with a shim (96) mounted therebetween to adjust the distance between the tie plate and the cross blade; and a replaceable shearing tip (124) having a dovetail mounted on the distal end of the upper jaw having a mortise portion (126). Sederberg does not disclose: the cross

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blade and the shearing tip is indexable; and a specific angle between the cross blade and the tie plate.

Ramun discloses an indexable blade insert (10) in various positions on a heavy-duty demolition apparatus. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the various blades of Sederberg with indexable blades of Ramun to extend the useful life of the blade.

With regards to the specific angle between the cross blade and the tie plate, it has been held that it is not inventive to discover the optimum or workable ranges by routine experimentation when general conditions are disclosed in the prior art. *In re Aller*, 220F, 2d 454, 105 USPQ 233 (CCPA 1955). Sederberg sets forth the general condition of a tie plate and a cross blade with a shim therebetween. The shim can be made to adjust the distance between the tie plate and the cross blade as well as the angle therebetween, and thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to discover the optimum or workable ranges to obtain the optimal cut angle of the material being processed.

Response to Arguments

Applicant's arguments filed February 12, 2002, have been fully considered but they are not persuasive.

Applicant argues that Sederberg does not teach or disclose an indexable, rotatable cross blade removably mounted. The examiner is curious as to why the applicant puts forth such an argument. The examiner has clearly stated in his 35 USC 103 rejection that Sederberg discloses "a cross blade (94) mounted on the inside of a tie plate (32) with a shim (96) mounted therebetween to adjust the distance between the tie plate and the cross blade" and that Sederberg does not disclose "the cross blade and the shearing tip is indexable". The applicant's argument

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merely repeats the examiners position. Sederberg is only the primary reference and Ramun was cited as a secondary reference combined with Sederberg to overcome the deficiencies. Further, the examiner has provided a motivational statement for combining Sederberg and Ramun in the rejection. "Ramun discloses an indexable blade insert (10) in various positions on a heavy-duty demolition apparatus. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the various blades of Sederberg with indexable blades of Ramun to extend the useful life of the blade."

Further, applicant argues that Sederberg does not teach or disclose a cross blade from forming a first angle between 1° - 30° with the tie plate. Again, the examiner does not understand the argument because the examiner has clearly stated in his 35 USC 103 rejection that Sederberg does not disclose "a specific angle between the cross blade and the tie plate." The examiner has provided an obvious statement to overcome this deficiency as noted above.

The examiner notes that the applicant has not fully addressed the drawing and claim objections as noted above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Hong whose telephone number is 703-308-9619. The examiner can normally be reached on Mon-Thu, 8:00a-6:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen Ostrager can be reached on 703-308-3136. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.



William Hong
Examiner
Art Unit 3725

March 12, 2002



ALLEN OSTRAGER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700